

The Burger Court Opinion Writing Database

United States v. Pennsylvania Industrial Chemical Corp.

411 U.S. 655 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 8, 1973

624
Re: No. 72-264 - United States v. PICCO

Dear Bill:

Please join me but will you also include me with
Potter and Lewis as to the right of the Respondent to offer
evidence on the absence of a permit program at the time of
the alleged violations.

Regards,



Mr. Justice Brennan

Copies to the Conference

WJB

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Sellers we win
have granted
open a sell

1st DRAFT

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

UNITED STATES v. PENNSYLVANIA INDUS-
TRIAL CHEMICAL CORPORATION

Recirculated: 12-14-72

Recirculated: _____

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 72-624. Decided December —, 1972

MR. JUSTICE DOUGLAS, dissenting.

On April 6, 1971, the Government filed a criminal complaint against the Pennsylvania Industrial Chemical Corporation ("PICCO") alleging that on four separate occasions the corporation had violated 33 U. S. C. § 407 and 411 by discharging industrial refuse matters into the Monongahela River, a navigable river.* Fol-

*It is not disputed that at the time of the alleged violations there was no formal scheme under which applications for exception could be submitted to the Secretary of the Army. In December 1970, the President announced the establishment of a formal Refuse Act permit program. That program, administered by the Corps of Engineers, is contained in 33 CFR § 209.131 and became effective after the conduct with which PICCO is charged took place.

This regulation provides in relevant part that all discharges to which the Refuse Act is applicable are unlawful unless authorized by a permit issued pursuant to the regulation; that the fact that official objection may not have been raised with respect to past or continuing discharges does not constitute authority in the absence of an appropriate permit; that "any such discharges . . . not authorized by an appropriate permit may result in the institution of legal proceedings . . .;" and that "the mere filing of an application requesting permission to discharge . . . will not preclude legal action in appropriate cases. . . ." (33 CFR § 209.131 (d)(3) and (4).)

The decision on the issuance of a permit is to be based on an evaluation of the impact which the discharge will have on anchorage and navigation, water quality standards, and wildlife values. In this regard, although the Refuse Act vest in the Secretary of the Army authority to issue the permit, he is directed to obtain information from the Environmental Protection Agency (EPA) on the effect such a request will have on the water quality standards. Except

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 3, 1973

Dear Bill:

Please join me in your opinion
in 72-624, U.S. v. Pennsylvania Industrial
Chemical Corp.

W.O.D.
William O. Douglas

Mr. Justice Brennan
cc: The Conference

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MS. B. 1. 1. v. 2
To: The Hon. Mr. Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-624

Argued: May 1, 1973

Recirculated: _____

United States, Petitioner, v. Pennsylvania Industrial Chemical Corporation | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

We review here the reversal by the Court of Appeals for the Third Circuit of respondent's conviction for violation of § 13¹ of the Rivers and Harbors Act of 1899.

¹ Section 13, 33 U. S. C. § 407, provides:

"It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed; *Provided*: That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work. *And provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage

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2nd DRAFT

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated:

No. 72-624

Recirculated: 5-4-73

United States, Petitioner,
v.
Pennsylvania Industrial
Chemical Corporation } On Writ of Certiorari to the
United States Court of Appeals for the Third Circuit.

[May —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

We review here the reversal by the Court of Appeals for the Third Circuit of respondent's conviction for violation of § 13¹ of the Rivers and Harbors Act of 1899,

¹ Section 13, 33 U. S. C. § 407, provides:

"It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: *And provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

From: Brennan, J.

Circulated:

No. 72-624

Recirculated: 5-10-73

United States, Petitioner, }
v.
Pennsylvania Industrial } On Writ of Certiorari to the
Chemical Corporation } United States Court of Appeals
for the Third Circuit.

[May — 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

We review here the reversal by the Court of Appeals for the Third Circuit of respondent's conviction for violation of § 13¹ of the Rivers and Harbors Act of 1899.

¹ Section 13, 33 U. S. C. § 407, provides:

"It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water, and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed; *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: *And provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage,

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 2, 1973

Re: No. 72-624, United States v. Pennsylvania
Chem. Corp.

Dear Bill,

I should appreciate your adding the following
at the foot of your opinion for the Court in this case:

"Mr. Justice Stewart dissents in part,
because he agrees with the Court of
Appeals that the respondent on remand
should be given the opportunity to
prove the nonexistence of a permit
program at the time of the alleged
offenses."

Sincerely yours,

P. S.

Mr. Justice Brennan

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 7, 1973

Re: No. 72-624 - United States v. Pennsylvania
Industrial Chemical Corp.

Dear Bill:

Please join me in your opinion in this
case.

Sincerely,



Mr. Justice Brennan

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 3, 1973

Re: No. 72-624 - U. S. v. Pennsylvania
Industrial Corporation

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 9, 1973

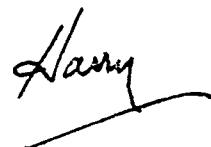
Re: No. 72-624 - U.S. v. Pennsylvania Industrial
Chemical Corp.

Dear Bill:

Would you please add the following at the foot of your opinion:

"Mr. Justice Blackmun, believing that the Court's opinion and judgment in United States v. Standard Oil Co., 384 U.S. 224 (1966), makes absolutely clear the meaning and reach of § 13 with respect to PICCO's industrial discharge into the Monongahela River; that subsequent reliance upon any contrary administrative attitude on the part of the Corps of Engineers, express or by implication, is unwarranted; and that the district court was correct in rejecting PICCO's offer of proof of reliance as irrelevant, would reverse the Court of Appeals with directions to reinstate the judgment of conviction."

Sincerely,



Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 2, 1973

No. 72-624 United States v. Pennsylvania
Chem. Corp.

Dear Bill:

Please add my name to Potter's partial dissent.

Sincerely,

Lewis

Mr. Justice Brennan

cc: The Conference

May 2, 1973

No. 72-624 United States v. Pennsylvania
Chem. Corp.

Dear Bill:

Please add my name to Potter's partial dissent.

Sincerely,

Mr. Justice Brennan

cc: The Conference

Dear Potter:

Would you object to adding the word "also" at the end of line 3 of your dissenting sentence, as set forth in your letter of May 2?

L. F. P., Jr.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 9, 1973

Re: No. 72-624 - U.S. v. Pennsylvania Industrial
Chemical Corporation

Dear Harry:

Your beautifully compact dissenting paragraph set forth in your letter of May 9 to Bill Brennan strikes home with me, and I have accordingly written asking, if you will permit it, that I be joined with you in it.

Sincerely,

WW

Mr. Justice Blackmun

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

file
May 9, 1973

Re: No. 72-624 - U.S. v. Pennsylvania Industrial
Chemical Corporation

Dear Bill:

Would you please add my name to that of Harry in
his dissenting paragraph set forth in his letter to you
of May 9.

Sincerely,

WB
Mr. Justice Brennan

Copies to the Conference